IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.484 OF 2004

Shri Baburao Kedu Aher .. .. Appellant

Versus

Shri Parasharam Kedu Aher & Ors... Respondents

Mr.Kishor Patil h/f P.N.Joshi for appellant

Mr.G.S.Godbole for respondents

CORAM : P.V.KAKADE, J.

DATE : 21ST JULY, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgement and order passed by Addl. District Judge, Nasik dated 3.12.2003 partly allowing the appeal and decreeing the suit for partition and setting aside the order of dismissal of the suit passed by Civil Judge, Junior Division, Nasik dated 27.1.1999.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for declaration and perpetual injunction against the defendants claiming that there was a partition of the suit property between him and defendant no.1 and defendant no.2 had sold part of his share land to defendant no.3 and hence the suit came to be filed for declaration and perpetual injunction. The defendants contested the suit on various grounds, inter alia, submitting that all the averments of the plaintiff were not correct. It was contended that the alleged partition of the suit property was not legal, as the defendant no.2 their real sister had her un-divided share in the suit properties and it was declared by the High Court, and therefore, there was no legal partition effected upon them and on such and other grounds the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute and came to the conclusion that the plaintiff had failed to prove his allegation and as such the suit came to be

dismissed. The appeal was carried to the District Court. The learned Addl. District Judge on the basis of available evidence and on hearing both the parties came to the conclusion that the suit deserves to be decreed and it was declared that the partition effected between the parties dated 8.1.1979 was legal and binding upon them and consequently the defendants were restrained from creating third party interest in the suit property till mutation as per the partition is effected in the record of rights. Hence the present appeal.

4. The only question of law appears to be involved in this appeal is to the effect that whether the document of partition on record is admissible in evidence or not? It was submitted on behalf of the appellant that since the deed of partition was not registered under Section 17(2) of the Registration Act, it was not admissible evidence, as held by the trial court and as such suit based upon such document was not maintainable. In support of his contention the learned counsel for the appellant sought to put reliance on the two rulings of the Apex Court **(AIR 2002 2526)** and **(AIR 1960 1299)** ratio of which is to the effect that document

effecting partition of joint family properties and value of more than Rs.100/= by metes and bounds, registration is compulsorily, as contemplated under Section 17 of the Indian Registration Act and in absence of such registration such document was admissible to prove title of any of the co-parceners to any of the property. However, it was also noted by the Apex Court that such document was, however, would be admissible to prove an intention of coparceners to become divided in status. In my considered view that there cannot be two opinions regarding ratio laid down by the aforesaid ruling of the Apex Court, however the ratio laid down by the yet another judgment of the Supreme Court in the case of **Digamber Adhar Patil vs. Devram Girdhar Patil** reported in **AIR 1995 SC 1728**, which categorically clarifies the position to the effect that it is not necessary that partition shuld be effected only by registered partition deed under the Hindu Law, even a family arrangement is enough to effectuate the partition between the co-parcener and to confer right to separate share and enjoyment thereof. This ratio is followed not only by the Apex Court in subsequent ruling but also by this Court in various cases and therefore, there is no doubt whatsoever that even memorandum of family arrangement

would be sufficient to effect a partition in the present case before us was the Exh.43 which is memorandum of partition shows that partitions between the parties took place on 6.1.1979 whereas the memorandum was prepared on 8.1.1979 for the purpose of record for making necessary mutation. In view of this factual matrix the submission made by the learned counsel for the appellant is devoid of any merits.

. It was also sought to submit on behalf of the appellant that the question of share of sister was not considered by the lower court and on that count also the appeal deserves consideration. However, perusal of the entire record to that effect shows that it is pure question of fact and there is no question of law involved to that aspect, which is properly discussed and adjudicated by the lower appellate court.

5. In the result the appeal is devoid of any merits and stands dismissed with no order as to costs.